

ORIGINAL

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

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DIAMOND TRIUMPH AUTO GLASS, INC.,

DEC 06 2002

Plaintiff,

PER 4  
DEPUTY CLERK

vs.

File No.: 3:CV-02-0514  
(James M. Munley, U.S.D.J.)

SAFELITE GLASS CORPORATION,

Defendant

**PLAINTIFF DIAMOND TRIUMPH AUTO GLASS, INC.'S REPLY TO  
DEFENDANT SAFELITE GLASS CORPORATION'S COUNTERCLAIM**

Plaintiff Diamond Triumph Auto Glass, Inc., for its Reply to the Counterclaim of Defendant Safelite Glass Corporation, states that it:

1. Denies each and every claim and allegation in Safelite's Counterclaim unless specifically admitted or otherwise qualified in this reply.
2. As to paragraph 1, Diamond Triumph admits that jurisdiction is proper and admits that Safelite has alleged a violation of the Lanham Act, but Diamond Triumph denies that it has in fact violated the Lanham Act.
3. As to paragraph 2, admits that venue in this district is proper.
4. Admits paragraphs 3 and 4.
5. As to paragraph 5, Diamond Triumph is without information sufficient to admit or deny whether Safelite's ability to generate revenue depends upon Safelite's

maintaining its business relationship and contracts with its Insurance clients, and therefore denies. Diamond Triumph admits the remainder of paragraph 5.

6. Diamond Triumph is without information sufficient to admit or deny paragraph 6, and therefore denies paragraph 6.

7. Admits paragraph 7.

8. Denies paragraphs 8 and 9.

9. As to paragraph 10, Diamond Triumph admits sending letters to Erie Insurance Company, Kemper Insurance Company and North Pacific Insurance Company, all of which are Safelite's Insurance clients. Diamond Triumph denies the remainder of paragraph 10.

10. Denies paragraphs 11 and 12.

11. Paragraphs 13 and 22 do not require responses from Diamond Triumph, and therefore Diamond Triumph denies.

12. Denies paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 29.

#### **AFFIRMATIVE DEFENSES**

1. Safelite has failed to mitigate its damages, if any.

2. Safelite's complaint fails to state a claim upon which relief can be granted.

3. Safelite is estopped by its own actions from asserting the claims in the Counterclaim.

4. Damages sustained by Safelite to its reputation, if any, were caused by Safelite's own actions.

5. Injunctive relief is not available in this action because Safelite comes to this Court with unclean hands.

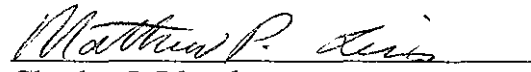
6. Safelite's action must be dismissed because the statements Safelite is claiming are defamatory are in fact true.

WHEREFORE, Diamond Triumph requests that the Court:

1. Dismiss Safelite's Counterclaim with prejudice.
2. Grant Diamond Triumph all relief sought in Diamond Triumph's Amended Complaint.
3. Grant Diamond Triumph other just relief.

LIVGARD & RABUSE, P.L.L.P.

Dated: 12-05-02

  
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